

CHAPTER 10

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CHAPTER 10

INTRAGOVERNMENTAL ACQUISITIONS AND REQUIRED SOURCES

I. INTRODUCTION. Following this block of instruction, students will understand:

- A. The various statutory authorities that permit federal agencies to purchase goods and services from each other.
- B. The obligation requirements associated with various intragovernmental acquisitions.
- C. The authority for intragovernmental employee training.
- D. The required sources for certain government acquisitions.

II. ECONOMY ACT.

- A. General. The Economy Act provides authority for federal agencies to order goods and services from other federal agencies, and to pay the actual costs of those goods and services. Congress passed the Act in 1932 to obtain economies of scale and eliminate overlapping activities of the federal government.
- B. Statutory Provisions. 31 U.S.C. § 1535.
 - 1. The Act permits the head of an agency to place an order for goods or services with another agency, or with a major organizational unit within the same agency, if
 - a. Funds are available;
 - b. The head of the agency decides the order is in the best interests of the government;

- c. The agency or unit filling the order can provide or get by contract the goods or services; and
- d. The head of the agency decides that the ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise. 31 U.S.C. §1535(a). See USA Info. Sys., Inc., and Dataware Techs., Inc. v. Government Printing Office, GSBCA Nos. 13535-P, 13560-P, 96-2 BCA ¶ 28,315; Dictaphone Corp., B-244691.2, Nov. 25, 1992, 92-2 CPD ¶ 380.

2. Applicability.

- a. Economy Act acquisitions include orders placed between military departments. See FAR 2.101 (defining executive agencies to include military departments); DFAS-IN Reg. 37-1, para. 120701; AFI 65-601, vol. I, para. 7.23; Valenzuela Eng'g, Inc., B-277979, Jan 26, 1998, 98-1 CPD ¶ 51; Obligation of Funds under Military Interdepartmental Purchase Requests, B-196404, 59 Comp. Gen. 563 (1980).
- b. The Economy Act applies only in the absence of a more specific interagency acquisition authority. FAR 17.500(b); An Interagency Agreement--Admin. Office of the U.S. Courts, B-186535, 55 Comp. Gen. 1497 (1976).
- c. The Economy Act does not apply to orders using the Developmental Fund for Iraq.

3. Actual Costs.

- a. The ordering agency must pay the performing agency the actual costs of the goods or services provided. See 31 U.S.C. § 1535(b); Use of Agencies' Appropriations to Purchase Computer Hardware for Dep't of Labor's Executive Computer Network, B-238024, 70 Comp. Gen. 592 (1991). Cf. DOD 7000.14-R (DOD Financial Management Regulation), Vol. 11A, Chap. 4; AFI 65-601, vol. I, paras. 7.17, 7.23.

- b. Actual costs include:
- (1) All direct costs attributable to providing the goods or services, regardless of whether the performing agency's expenditures are increased. Washington Nat'l Airport; Fed. Aviation Admin., B-136318, 57 Comp. Gen. 674 (1978). See GSA Recovery of SLUC Costs for Storage of IRS Records, B-211953, Dec. 7, 1984 (unpub.) (standard storage costs); David P. Holmes, B-250377, Jan. 28, 1993 (unpub.) (standard inventory, transportation, and labor costs); Economy Act Payments After Obligated Account Is Closed, B-260993, June 26, 1996, 96-1 CPD ¶ 287 (ordering activity required to use current funds to pay ten-year old obligation).
 - (2) Indirect costs, to the extent they are funded out of currently available appropriations, bear a significant relationship to providing the goods or services, and benefit the ordering agency. See Washington Nat'l Airport, supra (depreciation and interest); Obligation of Funds Under Mil. Interdep'tal Purchase Requests, B-196404, 59 Comp. Gen. 563 (1980) (supervisory and administrative expenses).
- c. DOD activities not funded by working capital funds normally do not charge indirect costs to other DOD activities. DOD 7000.14-R, Vol. 11A, para. 030601. Similarly, such activities generally do not charge indirect costs under interservice and intragovernmental support agreements. See DOD Instruction 4000.19, Interservice and Intragovernmental Support, para. D.6 (Aug. 9, 1995) (hereinafter DODI 4000.19).
- d. When "contracting out" for goods or services, the servicing agency may not require payment of a fee or charge which exceeds the actual cost of entering into and administering the contract. FAR 17.505(d); DOD 7000.14-R, Vol. 11A, para. 030601.

4. Obligation of Funds.

- a. The ordering agency obligates funds current when the performing activity accepts the reimbursable order and records the obligation upon receipt of written acceptance. 31 U.S.C. §§ 1501(a)(1), 1535(d); DFARS 208.7004-2(c); DOD 7000.14-R, Vol. 11A, para. 030404; DFAS-IN Reg. 37-1, table 8-2.
- b. If the performing activity has not incurred obligations to fill an order before the end of the period of fund availability, then the ordering activity must deobligate (recover) the funds. 31 U.S.C. § 1535(d); DOD 7000.14-R, Vol. 11A, para. 030404; The Honorable William F. Ford, B-223833, Nov. 5, 1987 (unpub.).

5. Compliance with CICA. The ordering agency may not procure from a performing agency that fails to comply with the Competition in Contracting Act (CICA) when contracting for a requirement. 10 U.S.C. § 2304(f)(5)(B); 41 U.S.C. § 253(f)(5)(B); Valenzuela Eng'g, Inc., B-277979, Jan 26, 1998, 98-1 CPD ¶ 51.

C. FAR Requirements. FAR Subpart 17.5; Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, § 1074, 108 Stat. 3243, 3271.

1. Determination & Finding (D&F) Requirement.

- a. Interagency Economy Act orders must be supported by a D&F stating that:
 - (1) Use of an interagency acquisition is in the best interest of the government; and
 - (2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source. FAR 17.503(a).

- b. Economy Act orders requiring contract action (to include placing an order against an existing IDIQ contract) by the performing agency also must include a statement on the D&F that:
 - (1) The acquisition will appropriately be made under an existing contract of the performing agency, entered into before placement of the order, to meet the requirements of the performing agency for the same or similar supplies or services;
 - (2) The performing agency has the capability/expertise to contract for the supplies or services, which capability is not available within the requesting agency; or
 - (3) The performing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies. FAR 17.503(b).
- c. **Do DOD Intra-Agency Economy Act orders (e.g., Army order off Air Force IDIQ supply contract or Navy requesting Army to contract for services) require a FAR Part 17.503 D&F?**
 - (1) **Issue is currently in flux and differs between services. Because intragovernmental acquisitions are currently a very high profile issue, check with your service's current policies. When in doubt, document with D&F.**
 - (2) **Army.**
 - (a) **Old Policy: A 1996 Policy Memo stated that, a D&F is not required for intra-DoD Economy Act orders. Memorandum for Acquisition Community, Subject: Contract Offloading Clarification, Kenneth Oscar, DASA, Procurement, 18 March 1996.**

- (b) **Current Policy¹: The 1996 policy memo is not reflected in the DFARS (217.503) or the AFARS. Current policy guidance out of the Office of the Deputy Assistant Secretary of the Army, Procurement Policy (POC Barbara Binney) is that unless an intraservice support agreement (DD Form 1144) is in place pursuant to DOD Instruction 4000.19, Interservice and Intragovernmental Support Agreements, then any intra-DOD purchase over the micropurchase threshold requires D&F in accordance with FAR 17.503 (see para. C.1. above for requirements).**
- (c) **Air Force. Guidance is that intra-DOD Economy Act orders do not require a FAR 17.503 D&F. (See AFFARS IG5317.5) (Jan 2005).**
- (d) **Navy. Apparently consistent with current Army policy, in that no D&F required if interservice support agreement satisfies requirements of DOD Instruction 4000.19. Presumably, if the MIPR does not satisfy the DODI, then a FAR 17.503 D&F would be required. NMCARS Part 5217-503.**

- 2. **Approval Authorities for D&F. FAR 17.503(c); DFAS-IN Reg. 37-1, para. 120702(A & B). (*but see additional DOD requirements discussed below*).**

¹ “In the early 90s, the interpretation of the FAR was that within DOD was intraagency. However, in the late 90s, probably when the DODI 4000.19 was revised, the interpretation became that intraagency was Army only. (My colleagues and I have discussed issue this over the years.)

The DODI 4000.19 addresses having a formal support agreement (ISSA, MOA, MOU) with another organization to include DOD organizations beyond Army which would require GO/SES approval to accomplish actions that are offloaded. When a support agreement exists, it satisfies the requirement for a D&F because the procurement file would document that this agreement exists. The Head of Agency signs the support agreement not the MIPR or a D&F. The agreement signifies the determination and no written determination is required for agreements between DOD Activities. So, if there is not a support agreement then a D&F is needed.”

Email message from Barbara Binney to MAJ Michael Devine, Contract and Fiscal Law Department, TJAGLCS, 10 January 2006.

- a. The requesting agency's contracting officer with authority to contract for the supplies or services to be ordered (or other person designated by the agency head) must approve the D&F.
- b. The Senior Procurement Executive of the ordering agency must approve the D&F if the performing agency is not covered by the FAR.

D. **DOD Requirements.** (Note, for orders going OUTSIDE of DoD, these requirements *heighten the approval levels for the D&F* above what the FAR requires in Subpart 17.503, as discussed above, and these requirements *make the findings more stringent because the findings required when outside agency contracting is required (subpara C.1.b above) are conjunctive rather than disjunctive as they are in the FAR*)).

- 1. SECDEF Memo. Memorandum, Secretary of Defense, to Secretaries of the Military Departments, Subject: Use of Orders Under the Economy Act (8 Feb 94)(Appendix C). As a result of DOD abuses of Economy Act transactions, the Secretary of Defense has ordered that, before issuing an Economy Act order for contract action outside of DOD, the head of the agency or designee shall determine that:
 - a. The ordered supplies or services cannot be provided as conveniently and cheaply by contracting directly with a private source;
 - b. The servicing agency has unique expertise or ability not available within DOD; and
 - c. The supplies or services are clearly within the scope of activities of the servicing agency and that agency normally contracts for those supplies or services for itself.
- 2. Implementation of the SECDEF Memo. Both the Army and Air Force have directed that before Economy Act orders are released outside of DOD for contract action, the requiring activity must prepare a D&F addressing the elements in the SECDEF memo.

- a. Within the Army, if requested, the contracting officer who normally would contract for the requesting agency should advise in the determination process. DFARS 217.503
 - b. The Air Force requires review of the D&F by a contracting officer as a "business advisor" to the approval authority.
- 3. Delegation of Authority. Pursuant to the SECDEF memo, the Army and Air Force have delegated their authority to approve Economy Act determinations for orders to non-DOD agencies.
 - a. A SES or General Officer commander/director of the requesting activity must approve the written determination if the performing agency is required to comply with the FAR.
 - b. The Senior Procurement Executive of the requesting activity must approve the written determination if the performing agency is not required to comply with the FAR.
- 4. Scope of Applicability. The procedures of FAR Subpart 17.5, DFARS Subpart 217.5, and DODI 4000.19 apply to all purchases, except micro-purchases, made for DOD by another agency (unless more specific statutory authority exists). This includes orders under a task or delivery order contract entered into by the other agency. DFARS 217.500. See also Pub. L. No. 105-261 § 814, 112 Stat. 1920, 2087-88 (1998).

E. Additional DoD Regulatory Guidance (applicable to orders over the SAT going outside of DoD). FAR Subpart 17.5; DOD 7000.14-R, Vol. 11A, para. 0304; DODI 4000.19; DFAS-IN Reg. 37-1, paras. 120501-120703; AFI 65-601, vol. I, paras. 7.19 to 7.25.

- 1. Office of the Secretary of Defense Memo: Proper Use of Non-DOD Contracts (29 Oct 2004). Army implementation thru USD (AL&T) Memo: Proper Use of Non-DOD Contracts (12 July 2005). **(See Outline Appendices).**

- a. Non-DOD contract vehicles (orders placed by DOD and contracts awarded or orders placed by non-DOD entities on behalf of DOD, including franchise funds) that exceed the simplified acquisition threshold must meet reviewing and approval requirements by January 1, 2005.
 - b. The reviewing and approval requirement must include:
 - (1) evaluating whether using a non-DOD contract is in the best interest of DOD;
 - (2) determining the requirement is within the scope of the contract to be used;
 - (3) ensuring the funding is in accordance with appropriation limitations;
 - (4) including all DOD unique requirements (statutes, regulations, directives . . .) in the order or contract; and
 - (5) collecting data on the use of assisted acquisitions for analysis.
 - c. Extensive data collection and reporting requirements for such acquisitions imposed by these memoranda.
2. The Office of Management and Budget (OMB) has issued guidance requiring agencies engaged in intragovernmental exchanges to obtain and use Dun & Bradstreet Universal Numbering System (DUNS) numbers as unique business location identifiers. Since October 1, 2003, certain purchases for goods and services that equal or exceed \$100,000 per order must be transmitted via the intragovernmental electronic commerce portal. See OMB Memorandum M-03-01 (Oct. 4, 2002), *available at* <http://www.whitehouse.gov/omb/memoranda/m03-01.html>.
3. Ordering Procedures.

- a. Orders must include all supporting data necessary to prepare the required contract documentation, including a description of the requirement, delivery terms, fund citation, payment provisions, and required determinations.
- b. Orders must be specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself.
- c. Economy Act orders citing an annual or multiyear appropriations must serve a bona fide need arising, or existing, in the fiscal year(s) for which the appropriation is available for obligation.
- d. As the work to be performed under Economy Act orders shall be expected to begin within a reasonable time after its acceptance by the servicing activity, the requesting activity should ensure in advance of placing an order that such capability exists.
- e. Normally, DOD ordering activities issue Economy Act orders using DD Form 448, Military Interdepartmental Purchase Request (MIPR) (Appendix A).

4. Acceptance.

- a. The accepting officer must be a duly authorized employee of the performing activity.
- b. If the ordering activity uses a MIPR, the performing activity accepts the order by issuing a DD Form 448-2, Acceptance of MIPR (Appendix B). Otherwise, the terms of the interagency agreement will determine the method of acceptance.
- c. If the activity issues a MIPR on a reimbursable basis, acceptance establishes fund obligation authority in the performing activity account, and the activity may incur costs in accordance with the terms of the order.
- d. Acceptance must indicate whether reimbursement will be on a "fixed-price" or "cost-incurred" basis. Acceptance on a fixed-price basis is required if:

- (1) Billable unfunded costs will be included on the accepted price of the order;
- (2) Each item or service ordered is priced separately;
- (3) The price does not include substantial contingencies;
- (4) The cost estimate included consideration of expected variances;
- (5) Neither activity expects many change orders; and
- (6) The requirement is of the type for which a fixed-price basis is practicable.

5. Payment and Billing.

- a. The performing activity may require advance payment for all or part of the estimated cost of the supplies or services. See AFI 65-601, vol. I, para. 7.25.3 (list of agencies requiring advance payment).
- b. Bills or requests for advance payment are not subject to audit before payment.
- c. The performing activity cannot exceed the amount of the order or direct fund cite. It must curtail or cease performance to avoid exceeding the estimated cost, and notify the ordering activity immediately.

6. Disputes.

- a. No formal method for dispute resolution exists for Economy Act transactions.

- b. The ordering and performing agencies "should agree" to procedures for the resolution of disagreements that may arise under interagency acquisitions, including the use of a third party forum. FAR 17.504(c).
- F. Problem Areas. See DOD Inspector General Audit Report Nos. 94-008 (Oct. 20, 1993), 93-068 (Mar. 18, 1993), 93-042 (Jan. 21, 1993), 92-069 (Apr. 3, 1992). See also, DOD Inspector General Audit Report No. D-2002-109 (Jun. 19, 2002), (discussing the United States Army Claims Service's (USACS) potential Anti-Deficiency Act violations related to USACS' transactions with the General Administration Service Information Technology Fund), *available at*, <http://www.dodig.osd.mil/audit/reports/fy02/02-109.pdf>.
 - 1. Failing to obtain proper approval. See FAR 17.503(c) (requiring contracting officer, or another person designated by the agency head, to approve Economy Act determination)
 - 2. Issuing orders to the Department of Energy (DOE) Tennessee Valley Authority (TVA) for common supplies and services, the acquisition of which do not require the special expertise of DOE/TVA management and operating contractors.
 - 3. Using the intragovernmental purchase process to avoid competition requirements, or to "dump" year-end funds.
 - 4. Failing to determine whether an intragovernmental acquisition is the most economical and efficient method to obtain goods and services.
 - 5. Citing Operations and Maintenance (O&M) funds on an order for investment/capital end items.
 - 6. Improperly classifying an Economy Act order as a project order to avoid the deobligation (recovery) requirements.
 - 7. Paying more than the "actual cost" of the goods or services provided. See 31 U.S.C. § 1535(b); Use of Agencies' Appropriations to Purchase Computer Hardware for Dep't of Labor's Executive Computer Network, B-238024, June 28, 1991, 70 Comp. Gen. 592 (1991).

8. Ordering in excess of the maximum quantities specified in a performing activity's requirements contract. Liebert Corp., B-232234, Apr. 29, 1991, 91-1 CPD ¶ 413.
9. Ordering improperly from nonappropriated fund instrumentalities. Compare 10 U.S.C. § 2482a (authorizing contracts or other agreements between service exchanges/MWR activities and federal departments) and 10 U.S.C. § 2424 (authorizing contracts using noncompetitive procedures between DOD and service exchange stores outside the United States for supplies and services up to \$50,000) with Dep't. of Agriculture Graduate Sch.--Interagency Orders for Training, B-214810, 64 Comp. Gen. 110 (1984) and Obtaining Goods and Servs. from Nonappropriated Fund Activities through Intra-Departmental Procedures, B-148581, 58 Comp. Gen. 94 (1978).

G. Other Economy Act Applications.

1. Interagency details.
 - a. The Economy Act authorizes interagency details of employees. The Honorable Robert W. Houk, B-247348, June 22, 1992 (unpub.) (unauthorized detail caused Antideficiency Act violation); Nonreimbursable Transfer of Admin. Law Judges, B-221585, 65 Comp. Gen. 635 (1986). See Federal Personnel Manual, ch. 300, subch. 8. See also 5 U.S.C. § 3341 (authority for intra-agency details). Cf. 10 U.S.C. § 374 (military personnel support to law enforcement agencies).
 - b. Details must be on a reimbursable basis unless: a law specifically authorizes nonreimbursable details; the detail involves a matter similar or related to matters ordinarily handled by the detailing agency, and will aid the detailing agency's mission; or the detail is for a brief period and entails minimal cost. See Department of Health & Human Servs. Detail of Office of Community Servs. Employees, B-211373, 64 Comp. Gen. 370 (1985); The Honorable William D. Ford, B-224033, Jan. 30, 1987 (unpub.); Details to Congressional Comms., B-230960, Apr. 11, 1988 (unpub.).

2. Interservice Support Agreements. From a fiscal standpoint, the Economy Act may form the basis for interservice agreements that involve recurring support between military departments, or between a military department and another federal agency. See DOD Instruction (DODI) 4000.19, Interservice and Intragovernmental Support (9 Aug. 1995); AFI 65-601, vol. I, ch. 7 (Oct. 94).
 - a. Memorialize support agreements with DD Form 1144, Support Agreement, or similar format that contains all the information required on the form. See DODI 4000.19, para. D.5.
 - b. Support is reimbursable to the extent that it increases the support supplier's direct costs. Costs associated with common use infrastructure are non-reimbursable, unless provided solely for the use of one or more tenants. DODI 4000.19, para. D.6.

III. PROJECT ORDERS.

- A. General. The Project Order Statute provides DOD with interdepartmental authority to order goods and services, separate and distinct from the Economy Act.
- B. Statutory Provisions. 41 U.S.C. § 23 (DOD); 14 U.S.C. § 151 (Coast Guard).
 1. The statute applies to transactions between military departments and DOD government-owned, government-operated (GOGO) establishments for work related to military projects. Matter of John J. Kominski, B-246773, (May 5, 1993), 72 Comp. Gen. 172 (the Economy Act, not the Project Order Statute, applies to DOD orders to non-DOD agencies).
 2. Orders placed with government-owned establishments shall be treated as if placed with commercial activities.
 3. Appropriations shall remain available for the payment of the obligations, as if the obligations arose under a contract with a commercial activity.
 4. The statute does not require special determinations, as with Economy Act orders.

- C. General Regulatory Guidance. DOD 7000.14-R (Department of Defense Financial Management Regulation) Vol. 11A, Ch. 2; AFI 65-601, vol. I, para. 7.16.5; DFAS-IN Reg. 37-1, para. 1208.
1. A project order is an order for specific types of goods or services. A project order may remain open until the work is done.
 2. Activities may issue project orders only to Government-Owned/Government-Operated (GOGO) facilities within DOD. GOGO facilities include shipyards, arsenals, ordnance plants, manufacturing or processing plants or shops, equipment overhaul or maintenance shops, research and development laboratories, testing facilities, and proving grounds which are owned and operated within DOD. DOD 7000.14-R, Vol. 11A, Ch. 2, para. 020303. See Matter of John J. Kominski, supra.
 3. Activities may issue project orders only for the following types of goods and services:
 - a. Production, maintenance, or overhaul of:
 - (1) Missiles and other weapons;
 - (2) Vehicles;
 - (3) Ammunition, clothing, and machinery;
 - (4) Other military supplies or equipment; and
 - (5) Component and spare parts for the above.
 - b. Research, development, test, and evaluation.
 - c. Minor construction or maintenance of real property.
 4. Activities shall not issue project orders for:

- a. Major construction;
- b. Education, training, subsistence, storage, printing, laundry, welfare, transportation, travel, or communications; or
- c. Any requirement where a contractual relationship cannot exist.

D. Ordering Procedures.

- 1. Project orders require no specific form, but DOD activities often use MIPRs. The order must be specific, definite, and certain. But see DFAS-IN Reg. 37-1, para. 120803 (requiring use of MIPRs for project orders).
- 2. Activities issue only reimbursable orders.
- 3. The order must indicate whether it will be performed on a cost basis or fixed-price basis. Follow the guidance set forth above for Economy Act orders to determine whether a fixed-price basis is required. See Sec. II.E.4.d, supra.

E. Acceptance and Performance.

- 1. Acceptance must be in writing. If the ordering activity issues a MIPR, the performing activity accepts on a MIPR.
- 2. At the time of acceptance, there must be evidence that the work will commence within a reasonable time. DOD adopted the Army's standard of 90 days. DOD 7000.14-R, Vol. 11A, ch. 2, para. 020510; DFAS-IN Reg. 37-1, para. 120803.
 - a. Project orders must serve a bona fide need existing in the fiscal year in which issued; otherwise, a valid obligation is not accomplished.
 - b. Agencies may not issue project orders for the primary purpose of continuing the availability of appropriations.

3. A GOGO facility must be "substantially in a position" to meet the ordering activity's requirement. Regulations require that the project order recipient incur costs "of not less than 51 percent of the total costs attributable to rendering the work or services ordered." DOD 7000.14-R, Vol. 11A, ch. 2, para. 020515.
- F. GAO Review. Generally, the GAO does not review agency decisions to perform in-house, rather than contract out, as they regard such decisions as matters of executive branch policy. SRM Mfg. Co., B-277416, Aug. 4, 1997, 97-2 CPD ¶ 40; Boulder Scientific Co., B-225644, Mar. 20, 1987, 87-1 CPD ¶ 323.

IV. GOVERNMENT EMPLOYEES TRAINING ACT (GETA).

- A. General. GETA provides guidance and specific authority for intragovernmental training of employees.
- B. Statutory Provisions. 5 U.S.C. § 4104.
 1. Federal agencies must provide for training, insofar as practicable, by, in, and through government facilities under the jurisdiction or control of the particular agency.
 2. When internal training is not possible, GETA authorizes interagency training on either a reimbursable or non-reimbursable basis. As GETA provides independent fund transfer authority, the requirements and restrictions of the Economy Act are inapplicable. Army Corps of Engineers - Disposition of Fees Received from Private Sector Participants in Training Courses, B-271894, July 24, 1997 (unpub.); To Walter L. Jordan, B-241269, Feb. 28, 1991 (unpub.).
- C. Regulatory Guidance. Federal Personnel Manual (FPM), Chap. 410, Subch. 4-3 (Oct. 22, 1981) (cancelled by the Office of Personnel Management (OPM) as of 31 December 1994, but still relied upon as federal personnel guidance).
 1. An agency that operates an interagency training facility may accept funds from other agencies for part or all of the costs of training their employees through reimbursements or other cost-sharing arrangements.

2. An agency may not obtain reimbursement for training if funds are already provided for interagency training in its appropriation.

V. THE CLINGER-COHEN ACT OF 1996.

- A. General. Section 5112(e) of the FY 1996 National Defense Authorization Act (Pub. L. No. 104-106) (permanently codified at 40 U.S.C. § 1412(e)) instructed the Director, Office of Management and Budget (OMB), to designate as considered appropriate, one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.
- B. Implementation.
 1. OMB has designated the General Services Administration (GSA) as the executive agent for certain government-wide acquisitions of information technology (IT).
 2. The scope of the designation is limited to programs that are funded on a reimbursable basis through the Information Technology Fund established by 40 U.S.C. § 757. These programs include the Federal Systems Integration and Management Center (FEDSIM) and Federal Computer Acquisition Center (FEDCAC), as well as other existing government-wide IT acquisition programs.
 3. The OMB designation, in combination with 40 U.S.C. § 757, provides separate authority for acquisition from these GSA programs. Current issues with FEDSIM and other GSA programs involve the expense of the programs and the requirement that DOD orders represent bona fide needs of the underlying DOD appropriation. DFAS-IN Reg. 37-1, para. 080609. See e.g., Floro & Associates, B-285.481.4, B-285.481.4, Oct. 25, 2000, 2000 CPD ¶ 172 (GAO concludes that GSA's task order for "management services" was materially different from that of the underlying contract, which required "commercially off-the-shelf hardware and software resulting in turnkey systems for GSA's client agencies.")

VI. REQUIRED SOURCES.

A. Source Priorities. 41 C.F.R. § 101-26.107; FAR 8.001. Generally, agencies shall adhere to the following orders of precedence when obtaining supplies or services:

1. Supplies.

- a. Agency inventory;
- b. Excess from other agencies;
- c. Federal Prison Industries, Inc.;
- d. Committee for Purchase from People Who are Blind or Severely Disabled;
- e. Wholesale supply sources;
- f. Federal supply schedules; and
- g. Commercial sources.

2. Services.

- a. Committee for Purchase from People Who are Blind or Severely Disabled;
- b. Federal supply schedules; and
- c. Federal Prison Industries, Inc., or commercial sources.

B. Federal Prison Industries, Inc. (FPI or UNICOR). 18 U.S.C. §§ 4121-4128; 28 C.F.R. §§ 301-345; FAR Subpart 8.6; <www.unicor.gov>. Federal agencies and institutions were required to purchase FPI products that met their requirements and were available. 18 U.S.C. § 4124. See Battery Assemblers, Inc., B-260043, May 23, 1995, 95-1 CPD ¶ 254 (agency reasonably determined UNICOR's price did not exceed "current market price"); Hiltronics Corp., B-238142, Apr. 11, 1990, 90-1 CPD ¶ 384; Forest Serv.--Requirement to Procure from Fed. Prison Indus., Inc., A-67190, 62 Comp. Gen. 617 (1983); Minx Prods., Inc., B-175249, Apr. 11, 1972 (unpub.). However, the National Defense Authorization Act of 2002 qualified FPI's mandatory source status and now DoD agencies are required to compare the price, quality, and time of delivery of FPI products to private industry products. If the FPI product is not comparable, the contracting officer may conduct a competitive procurement. FPI is authorized to compete in the competitive procurement. See 67 Fed. Reg. 20687 (April 26, 2002). The contracting officer has unilateral authority to make comparability determinations. See 68 Fed. Reg. 26,265 (May 15 2003). DoD agencies are also required to rate FPI's performance, compare it to the private sector, and provide FPI feedback on previously awarded contracts. See 68 Fed. Reg. 28,905 (May 22, 2003).

1. FPI lists its products and services in the "Schedule of Products made in Federal Penal and Correctional Institutions" (Schedule).
2. An activity must obtain clearance from FPI to acquire Schedule supplies from other sources, except when:
 - a. The contracting officer determines the FPI product is not comparable in price, quality or delivery;
 - b. Public exigency requires immediate delivery or performance;
 - c. Used or excess supplies are available;
 - d. Goods are acquired and used outside the United States;
 - e. Orders totaling \$2500 or less or acquiring services. FAR 8.605.).

3. Disputes regarding price, quality, and suitability of supplies, excluding comparability determinations made by contracting officers, are subject to arbitration. FAR 8.602(f).
- C. Committee for Purchase From People Who Are Blind Or Severely Disabled (Committee). 41 U.S.C. §§ 46-48c; 41 C.F.R. Part 51; FAR Subpart 8.7.
1. Like FPI, the Committee publishes a "Procurement List" of supplies and services. These products and services are available from nonprofit agencies for the blind or severely disabled. The Committee may request that a contracting activity assist in determining whether a workshop has the capability to perform a requirement. See FAR 9.107. An agency must consider acquiring services from a workshop only if the agency otherwise intends to contract for them. See Rappahannock Rehab. Facility, Inc., B-222961, Sept. 10, 1986, 86-2 CPD ¶ 280; Kings Point Mfg. Co., B-185802, Mar. 11, 1977, 77-1 CPD ¶ 184.
 2. Activities must purchase listed supply requirements from applicable nonprofit agencies (workshops) at prices established by the Committee, unless the supply is available from FPI. The Committee, however, has priority over FPI for listed services. See Western States Mgmt. Servs., Inc., B-233576, Dec. 8, 1988, 88-2 CPD ¶ 575; Abel Converting Inc., B-229581, Mar. 4, 1988, 88-1 CPD ¶ 233.
 3. Agencies may obtain requirements from commercial sources only if specifically authorized by the applicable central nonprofit agency or the Committee. The central nonprofit agency must grant an exception if:
 - a. The workshops cannot perform timely, and the commercial sources can; or
 - b. The workshops cannot produce the quantities required economically.
 4. Activities place orders for supplies with the GSA, Defense Logistics Agency (DLA), or the Department of Veterans Affairs (VA). In some cases, an activity may order directly from a nonprofit agency/workshop. The governing central nonprofit agency must authorize a direct purchase.

5. Activities may address complaints about the quality of supplies distributed by GSA or DLA to the pertinent agency. For supplies or services obtained directly from a workshop, activities may address complaints to the workshop, with a copy to the central nonprofit agency.
 6. Workshops may compete against commercial sources on acquisitions for supplies or services not included in the Procurement List.
 7. The GAO will not review an agency's decision to purchase goods or services from workshops. Microform Inc., B-246253, Nov. 13, 1991, 91-2 CPD ¶ 460.
- D. DOD Coordinated Acquisition. 10 U.S.C. § 2309; DFARS Subpart 208.70; DOD Dir. 4140.26, Integrated Materiel Management of Consumable Items.
1. DOD agencies may obligate funds for the acquisition of supplies only under regulations prescribed by the Secretary of Defense. 10 U.S.C. § 2202(a).
 2. Under coordinated acquisition procedures, a DOD component ("requiring activity") may be required to obtain commodities through another DOD component or GSA ("acquiring activity"). DFARS 208.7003-2. See Tracor, Inc., B-195736, Jan. 24, 1980, 80-1 CPD ¶ 69.
 3. Assignments under the Integrated Materiel Management (IMM) Program. DFARS 208.7003-1; DOD 4140.26M. Activities must obtain assigned items from the IMM manager unless:
 - a. There is an unusual and compelling urgency;
 - b. The IMM manager codes an item for local purchase;
 - c. Purchase by the requiring activity is in the best interest of the government. This exception does not apply to:
 - (1) Items critical to the safe operation of a weapon system;

- (2) Items with special security characteristics;
 - (3) Dangerous items (e.g., explosives, munitions).
- 4. Assignments under the Coordinated Acquisition Program. DFARS 208.7003-2. Activities must submit all contracting requirements for assigned items to the acquiring activity, unless:
 - a. The activity must obtain the item from a FAR 8.001 required source;
 - b. The activity obtains the item from the IMM manager;
 - c. The requirement does not exceed the simplified acquisition threshold, and direct contracting is in the activity's interest;
 - d. The activity needs the item in an emergency;
 - e. The acquiring activity delegates authority to the requiring activity;
 - f. The item is part of a research and development stage (generally, this exception applies only when RDT&E funds are used);
 - g. National security requires limitation of sources;
 - h. The supplies are available only from the original source for a follow-on contract;
 - i. The item is directly related to a major system and is design-controlled by and acquired by the manufacturer;
 - j. The item is subject to rapid design changes which require continual contact between industry and the requiring activity to ensure the item meets requirements; or

- k. The item is noncataloged and represents a nonrecurring requirement (i.e., a "one-time buy").
5. Normally, under the Coordinated Acquisition Program, requiring activities use MIPRs to place orders. DFARS 208.7004-1.
- a. The acquiring activity determines whether the order will be on a reimbursable (category I) or direct citation (category II) basis. DFARS 208.7004-2(b).
 - b. The acquiring activity may use a reimbursable order if delivery is from existing inventories or by diversion from existing contracts of the acquiring activity; production or assembly is at government-owned plants; the requirement involves assembly of end items by the acquiring department; or the acquiring activity will make contract payments without reference to deliveries of end items. DFARS 208.7004-2(b).
 - c. If a direct citation MIPR cites funds that will expire after 30 September, the acquiring activity must receive the MIPR by 31 May. DFARS 208.7004-4(a).
 - d. The acquiring activity must accept MIPRs within 30 days. DFARS 208.7004-2(a).

VII. CONCLUSION.